A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
DIVISION BENCH

CORAM: HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI V.K. SHRIVASTAVA, J.

Writ Petition No. 2805/2003

Petitioner

R.K. Vij, IPS, S/o Late KR Vij, aged about 42 years, presently posted as Additional Transport Commissioner & Special Secretary, Department of Home (Transport) Government of Chhattisgarh, Raipur (CG).

Versus.

Respondents

1) Union of India, through Secretary, Ministry of Home Affairs, New Delhi.

2) State of Madhya Pradesh, through Principal Secretary, Department of Home, Mantralaya, Vallabh Bhawan, Bhopal (MP).

3) State of Chhattisgarh, Through the Principal Secretary, Department of Home, Mantralaya, DKS Bhawan, Raipur (CG).

4) S.P. Pandey, IPS
5) S. Ibrahim, IPS
6) A.K Dhasmana, IPS
7) Vijay Kumar Singh, IPS
8) Rajendra Kumar, IPS
9) Dr S.K Shrivastava, IPS
10) Sanjiv Kumar Singh, IPS
11) Sushovan Banerjee, IPS
12) Ms. A Shankar, IPS
13) P.K. Shrivastava, IPS
14) Ravi Kumar Gupta, IPS
15) Raja Babu Singh, IPS
16) K Vaiphei, IPS
17) D.C. Sagar, IPS
18) D. Shahid Abrar, IPS

Respondents No.4 to 18 through Director General of Police, Madhya Pradesh, Police Head Qtrs, Bhopal (Madhya Pradesh)

19) Vishwaranjan, IPS

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20) O.P. Rathore, IPS
21) Praveen Mahendru, IPS
22) Anil M Navaney, IPS
23) Ram Niwas, IPS
24) M.W.Ansari, IPS
25) A.N. Upadhyay, IPS
26) D.M Awasthi, IPS
27) Binay Kumar Singh, IPS
28) Ashok Juneja, IPS
29) Arundeo Gautam, IPS
30) Gurjinder Pal Singh, IPS
31) T.J. Long Kumar, IPS
32) Vivekanand, IPS

Respondents No.19 to 32 through Director General of Police, Chhattisgarh, Police Head Qtrs, Raipur (CG)

Present: Shri Manindra Shrivastava, Sr. Counsel with Shri Akhilesh Dalpati, learned counsel for the petitioner.

Shri S.K. Beriwal, Central Government Counsel for respondent No.1.

Shri Sachin Singh Rajput, counsel for respondent No.2/State of M.P.

Shri Prashant Mishra, Additional Advocate General with Shri Utkash Verma, Dy. Govt. Advocate for the State of Chhattisgarh.

Shri Sameer Sahu and Shri Ashok Vaishnav, counsel for respondent No.15.

Shri Bhaskar Payasi, Counsel for respondent No.17.

Smt.Fouzia Mirza, Counsel for respondents No. 22, 23, 26 & 28.

Shri Rajendra Tripathi, Counsel for respondents No.24, 25, 29 and 30.

None for other respondents.

ORAL ORDER
(Passed on 28th August, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, C.J.

The petitioner belongs to the Indian Police Service. Before the formation of the new State of Chhattisgarh, he was allocated to the

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undivided State of Madhya Pradesh. After formation of the new State of Chhattisgarh, the petitioner vide orders dated 31/10/2000 and 06/11/2000 was allocated to the cadre of Indian Police Service in the State of Chhattisgarh. Representations made by the petitioner to retain him in M.P. State went in vain. Feeling aggrieved by the said action of the Government of India, the petitioner filed O.A.No. 2421/2001 before the Central Administrative Tribunal (for short, "the Tribunal"), Principal Bench at New Delhi. When that O.A.No.2421/2001 came up for consideration before the Tribunal, Principal Bench at New Delhi, it is stated that a representation was made before the Tribunal by the Government of India that it would consider the representations of the petitioner and that of the similarly circumstanced other IPS officers. In view of this undertaking given by the Government of India, the Tribunal by its order dated 05/02/2002 (Annexure P/3) disposed of O.A.No.2421/2001 directing the Government of India to take a decision on the representations of the petitioner and similarly circumstanced other IPS officers, as early as possible and in any case within a period of three months from the date of receipt of a copy of that order. It appears that the Government of India did not take a decision within the time-frame fixed by the Tribunal. However, belatedly, the Government of India vide its order dated 16/06/2005 and 27/06/2005 rejected the claim of the petitioner to allocate him to the State of Madhya Pradesh.

2. In the meanwhile, this writ petition was filed on 01/09/2003 for a direction to the Government of India to dispose of the petitioner's representations, as directed by the Tribunal. After the Government of India passed the orders against the petitioner on 16/06/2005 and 27/06/2005, the petitioner moved an application I.A.No. 7142/2005 for amendment of the writ petition so as to assail the legality of those orders of the Government of India. Opposing that application, on behalf of the

Government of India, an objection *inter alia* other objections, was raised by contending that the petitioner without exhausting alternative remedy before the Tribunal against the orders of the Government of India dated 16/06/2005 and 27/06/2005 should not be allowed to challenge the same directly before this Court under Article 226 of the Constitution of India. In support of that contention, the Government of India placed strong reliance on para 99 of the judgment of the Supreme Court in **L. Chandra Kumar Vs. Union of India**[1].

3. On the other hand, on behalf of the petitioner, it was contended that inasmuch as the petitioner has had on an earlier occasion filed O.A.No.2421/2001 before the Tribunal and the Government of India did not correct itself and again passed adverse orders against the petitioner, this Court could review the validity of those orders. In support of that contention, the petitioner placed reliance on the judgment of the Supreme Court in **T.K. Rangarajan Vs. Government of Tamilnadu and others**[2]. In the premise of these contentions, the Court was called upon to consider the sole question whether the amendment sought by the petitioner should be allowed or not. This Court by its order dated 09/08/2005 allowed the application for amendment.

4. Having heard Shri Manindra Shrivastava, learned Sr. Counsel for the petitioner, Shri S.K. Beriwal, learned counsel for Union of India and learned State counsel for the State of Chhattisgarh, we are of the considered opinion that in a matter like this, if the Court were to entertain this writ petition filed without exhausting alternative remedy before the Tribunal, it would amount to the Court laying down a bad precedent, which will not be healthy or expedient.

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1. (1997) 3 SCC 261 2. (2003) 6 SCC 581

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5. As we have said in our recent judgment in the case of **Dhaneswar Devangan Vs. State of C.G. and others**[3], at times, it becomes necessary for the Court to remind itself about the self-imposed restraints and limitations in exercise of the power granted to the Court by the Constitution under Article 226. The Court can take judicial notice of the fact that large number of writ petitions are filed in this Court by persons without exhausting statutory alternative remedies or other effective and adequate remedies available to them. Article 226 of the Constitution empowers High Courts to issue directions, orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them. Such directions, orders or writs may be issued for the enforcement of fundamental rights or for any other purpose. It is needless to state that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse the relief to an applicant in certain circumstances even though a legal right might have been infringed. Availability of an alternative remedy is one of such considerations which the High Court may take into account to refuse to exercise its jurisdiction. It is true that the Supreme Court in **Mohd. Yasin Vs. Town Area Committee**[4] and the cases to follow that case held that an alternative remedy is not a bar to move a writ petition in the High Court to enforce a fundamental right. This is the only exception. In all other cases where no fundamental right is involved, it has been ruled that the High Court would not exercise its jurisdiction under Article 226 where an alternative, adequate and efficacious legal remedy is available and the petitioner has not availed of the same before coming to the High Court. Ofcourse, Article 226 is silent on this point; it does not say

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3. 2006 (1) CGLJ 221 4. AIR 1952 SC 115

in so many words anything about this matter, but the Courts have themselves evolved this rule as a kind of self -imposed restriction on their jurisdiction under Article 226. The rule of exhaustion of alternative remedy before invoking jurisdiction under Article 226 has been characterized as a rule of policy, convenience and discretion rather than a rule of law. The above rule has been justified on the ground that persons should not be encouraged to circumvent the provisions made by a statute providing for a mechanism and procedure to challenge administrative or quasi-judicial actions taken thereunder.

6. We do not wish to burden our opinion with reference to the case law. Suffice it to state that what is stated in the above judgment of this Court, in paras 5 to 10 is quite apposite to be noted in the context of this case also and they read as follows:

> "**5.** In **Union of India Vs. T.R. Varma**[5], the Supreme Court observed:
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> *"It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but ... "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs.... "And when such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor."*
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> **6.** In **Thansingh Vs. Supdt. of Taxes**[6], the Supreme Court was pleased to observe:
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> *"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof in not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to*

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5. AIR 1957 SC 882 6. AIR 1964 SC 1419

certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226 where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not, therefore, act as a Court of appeal against the decision of a Court or Tribunal to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another Tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and it will leave the party applying to it to seek resort to the machinery so set up."

7. In **Assistant Collector of Central Excise Vs. Dunlop India Limited**[7], the Supreme Court in para 3 observed:

"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Art.226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Art.226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged".

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7. AIR 1985 SC 330

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8. Further, what could be gathered from the decisions of the Supreme Court in U.P.J.N. Vs. Nareshwar, reported in (1995) 1 SCC 21, T.P.M. Vs. State of Orissa, reported in AIR 1983 SC 603, H.B. Gandhi Vs. Gopi Nath and Sons, reported in 1992 Supp.(2) SCC 312 is that where statutory remedies are available or statutory Tribunal has been set up, a petition under Article 226 should not be entertained, unless the statutory remedies are ill-suited to meet the demands of any extraordinary situation, for example, where the very vires of the statute is in question; or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require that recourse may be had to Article 226; or where the alternative remedy is not effective or adequate; or where the alternative remedy is onerous or burdensome or inadequate; or where it involves inordinate delay or illusory in nature; where the impugned action is palpably wrong or goes to the root of the jurisdiction or where there is total lack of jurisdiction in the authority.

9. There are certain sound reasons behind this rule. Remedies by way of judicial review under Article 226 are fundamentally different from the other remedies. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the High court on review under Article 226 is concerned only with the question whether the Act or order under attack should be allowed to stand or not. It is quite often stressed by the Courts that judicial review is not against a decision under attack but against the decision –making process. In H.B. Gandhi Vs. Gopi Nath and Sons (supra), in para 8, The Supreme Court observed:

"Judicial review, it is true, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the law. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

10. H.W.R. Wade in his treatise on Administrative Law (6th Edition) at page 36 observes:

"The system of judicial review is radically different from the system of appeals. When hearing an appeal the

> *Courts is concerned with the merits of the decision under appeal. When subjecting some administrative act or order to judicial review, the Court is concerned with its legality. On an appeal the question is "right or wrong?" On review the question is "lawful or unlawful?"*

7. Above all, it needs to be noticed that in deciding the question whether the parties should be permitted to approach this Court straightaway without exhausting alternative remedies in the context of the present time and place, the Court should bear in mind the undeniable fact that there are certain areas of jurisdiction which this Court alone can exercise and no other Court or judicial or *quasi-judicial* forum. There is alarming pendency of cases in this Court. This Court is not in a position to hear and dispose of large number of very old such cases and the litigant public knocking at the doors of this Court for justice helplessly for years and decades. If the Court finds that the writ applicant has alternative, efficacious, adequate remedy before a Tribunal or judicial forum or Civil Court or otherwise, it would not be appropriate for this Court to step in under Article 226 of the Constitution and entertain application of such applicant filed without exhausting alternative remedies. Looking from that angle and taking into account the imperatives of time and place, we will not be justified in entertaining this writ petition filed straightaway without exhausting alternative remedy against the impugned orders.

8. In the premise of these principles, let us have a look at the *lis* brought before this Court and decide whether the writ applicant has efficacious, adequate alternative remedy before any Court or Tribunal or judicial forum. Undeniably, the Tribunal constituted under the Administrative Tribunal Act, 1985 (for short, "the Act") has the power and jurisdiction to decide the *lis* brought before the Court. The *lis* is simple. The question turns around whether after the formation of new State of

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Madhya Pradesh and the new State of Chhattisgarh, the petitioner who was serving as an Indian Police Service Officer in the cadre of the undivided State of Madhya Pradesh should be retained in the new State of Madhya Pradesh or in the new State of Chhattisgarh. Secondly, it is not that the Tribunal has itself committed any *ex facie* error or wrong in appreciating and deciding the claim of the petitioner. As already pointed out *supra*, on an earlier occasion, the Tribunal, in view of the undertaking given by the Government of India, only directed the Government of India to correct the mistakes, if any, and to pass appropriate orders on the representations made by the petitioner and similarly circumstanced other IPS Officers to retain them in the newly formed State of M.P. The petitioner without protest and demur and without pursuing any further legal remedies which were available made his further representation before the Government of India and only when the Government of India passed adverse order against him and similarly circumstanced others on 16/06/2005 & 27/06/2005, the petitioner sought to challenge the same in this Court directly by filing an application for amendment of the prayer.

9. Whereas the above is the factual matrix of the case, Shri Manindra Shrivastava, with his usual perseverance and vehemence would contend that the Tribunal ought not to have acceded to the request of the Government of India; that it itself should have considered the claim of the petitioner on merit. Shri Manindra Shrivastava would also try to impress upon the Court that it would be unjust at this distance of time to direct the petitioner to work out legal remedies before the Tribunal.

10. *Per contra*, learned Standing Counsel appearing for the Government of India and State of Chhattisgarh would contend that there is no warrant for this Court to undertake adjudication of the *lis;* in the first instance as per the law laid down by Hon'ble the Supreme Court in para

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99 of the judgment in the case of **L. Chandra Kumar** (Supra[1]), the petitioner should first exhaust legal remedies before the Tribunal and then only he can approach this Court under Articles 226/227 of the Constitution of India.

11. We do not find any substance in the first contention of Shri Manindra Shrivastava. It needs to be noticed that when the Tribunal disposed of O.A.No.2421/2001 filed by the petitioner directing the Government of India to pass appropriate orders on the representation made by the petitioner and similarly circumstanced other IPS officers, the petitioner did not make any protest. Even assuming that such a protest was made before the Tribunal and the Tribunal was called upon the Tribunal to decide the matter on merit and the Tribunal declined to do so, the petitioner without loss of time ought to have questioned the correctness of the order of the Tribunal and sought a mandamus from this Court to decide the issue on merit without referring back the issue to the Government of India. As per the order made by the Tribunal, there was no such protest. Secondly, even after the order was made, the petitioner made further representation to the Government of India and he was pressing for an order on his representation. There is no necessity for us to consider whether the orders made by the Government of India on 04/04/2005 and 16/06/2005 are valid and justified. Suffice it to state that these orders are made by the Government of India, in pursuance of a direction issued by the Tribunal on an earlier occasion. The Tribunal has had no occasion to deal with the merit of the aforementioned two orders. It is not as if either the Government of India or the Tribunal repeatedly despite repeated mandamus issued by this Court with impunity and deliberately passed adverse orders against the petitioner warranting exercise discretion vested in this Court under Article 226 of the Constitution of India to permit the petitioner to approach this Court directly

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without exhausting alternative remedy again. If the aforementioned two orders are illegal or invalid on any permissible ground, certainly, it is open for the petitioner to work out his legal remedies before the Tribunal. The Tribunal has all the power and jurisdiction to grant relief sought before this Court. We do not find any extraordinary or weighty situation or circumstance which could weigh with us to permit the petitioner to straightaway approach this Court to assail the correctness and validity of the aforementioned two orders. It is not as if the aforementioned two orders were passed decades back. The impugned orders were passed in the year 2005. We think that the ends of justice would be met by directing the jurisdictional Tribunal to dispose of the Original Application of the petitioner, if filed, within a time-frame.

12. In the result and for the aforementioned reasons, we dismiss the writ petition, however, reserving liberty to the petitioner to work out his legal remedies before the jurisdictional Tribunal. If the petitioner institutes Original Application within a period of one month from today, the jurisdictional Tribunal is directed to dispose of the same within a period of six months from the date of institution of such original application without reference to the limitation. All the contentions raised by the respective parties in this writ petition are left open to be agitated before the Tribunal for its consideration and decision-making.

In the facts and circumstances of the case, the parties shall bear their respective costs.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge

Raju